

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

ROBERT T. BROCKMAN

§
§
§
§
§

Criminal No. 4:21-cr-00009

DECLARATION OF KATHRYN KENEALLY

I, Kathryn Keneally, declare as follows:

1. I am a member of the bar of the State of New York and various federal courts. On January 8, 2021, I was admitted *pro hac vice* to appear in the United States District Court for the Southern District of Texas. Dkt. No. 8. I am a partner of the law firm Jones Day and counsel for the defendant Robert T. Brockman. I make this Declaration in support of Defendant Robert T. Brockman's Motion for the Appointment of Neutral Court-Designated Experts and to Exclude Testimony from Dr. Park Dietz, Dr. Robert Denney, and Dr. Ryan Darby.

2. Attached hereto as Exhibit 1 is a copy of the email from Corey J. Smith to Kathryn Keneally, Lee F. Langston, and Christopher Magnani, copying Jason S. Varnado, James P. Loonam, Conor G. Maloney, and Georgina N. Druce, dated February 22, 2021.

3. On June 21, 2021, Corey J. Smith transmitted to the Court: the transcript of the May 18, 2021 examination of Mr. Brockman by Dr. Robert Denney and Dr. Park Dietz; the transcript of the May 20, 2021 examination of Mr. Brockman by Dr. Robert Denney

and Dr. Park Dietz; Dr. Ryan Darby's expert report; Dr. Robert Denney's expert report;
Dr. Park Dietz's expert report; and Dr. Park Dietz's CV.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on August 11, 2021.

/s/ Kathryn Keneally
Kathryn Keneally

EXHIBIT 1

From: Smith, Corey (TAX) <corey.smith@usdoj.gov>
Sent: Monday, February 22, 2021 11:46 AM
To: Keneally, Kathy; Langston, Lee F. (TAX); Magnani, Christopher (TAX)
Cc: Varnado, Jason S.; Loonam, James P.; Maloney, Conor G.; Druce, Georgina N.
Subject: RE: U.S. v. Brockman 4:21cr009 GCH

**** External mail ****

Kathy et al

In response to your proposed Order. We agree in apart and disagree in apart, as follows:

- 1) We do not agree to the presence of counsel during any examination/interview/testing of Defendant. Counsel can be available by phone for consultation with Defendant during breaks in the examinations/interviews/testing;
- 2) We agree to audio and video recording during the psychiatric interview only. We do not agree to audio and/or video recording during any psychological testing or examination;
- 3) We agree that statements made by Defendant during examination/testing/interviews are not to be used in the government's case-in-chief during trial, but may be used in the competency hearing; and
- 4) We agree that statements of Defendant made during expert examination/testing/interviews may be used as "prior inconsistent" statements under the precepts of Fed Rul Evid 613, and/or any other applicable rule.

We are available for a meet and confer on Thursday Feb 24, 2021 at 2:00 pm

Corey J. Smith
Senior Litigation Counsel
Tax Division
(202) 514-5230

From: Keneally, Kathy <kkeneally@jonesday.com>
Sent: Monday, February 22, 2021 10:19 AM
To: Smith, Corey (TAX) <Corey.Smith@tax.USDOJ.gov>; Langston, Lee F. (TAX) <Lee.F.Langston@tax.USDOJ.gov>; Magnani, Christopher (TAX) <Christopher.Magnani@tax.USDOJ.gov>
Cc: Varnado, Jason S. <jvarnado@jonesday.com>; Loonam, James P. <jloonam@jonesday.com>; Maloney, Conor G. <cmaloney@jonesday.com>; Druce, Georgina N. <gdruce@JonesDay.com>
Subject: FW: U.S. v. Brockman 4:21cr009 GCH

All,

Best for us this week is:

Thursday, 2/25, 2-2:30 ET
Friday, 2/26, 2 pm or later ET

Please let us know if you can give us your positions on our proposed order sooner than any call. I believe that we have discussed all of these issues in earlier calls.

Thank you.

Kathy

Kathryn Keneally

Partner

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kkeneally@jonesday.com

From: Keneally, Kathy

Sent: Monday, February 22, 2021 9:51 AM

To: 'Smith, Corey (TAX)' <corey.smith@usdoj.gov>; Langston, Lee F. (TAX) <Lee.F.Langston@usdoj.gov>; Magnani, Christopher (TAX) <Christopher.Magnani@usdoj.gov>

Cc: Varnado, Jason S. <jvarnado@jonesday.com>; Stephens, Neal J. <nstephens@jonesday.com>; Druce, Georgina N. <gdruce@jonesday.com>; Smith, David S. <dssmith@jonesday.com>

Subject: RE: U.S. v. Brockman 4:21cr009 GCH

Corey and All,

I will check calendars on our side and get back to you.

In this same regard, attached is a proposed scheduling order. We are prepared to file a motion in support. Please let us know your position on each of the issues.

Thank you.

Kathy

Kathryn Keneally

Partner

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From: Smith, Corey (TAX) <corey.smith@usdoj.gov>

Sent: Monday, February 22, 2021 9:39 AM

To: Keneally, Kathy <kkeneally@jonesday.com>; Varnado, Jason S. <jvarnado@jonesday.com>; Stephens, Neal J.

<nstephens@jonesday.com>; Druce, Georgina N. <gdruce@JonesDay.com>; Smith, David S. <dssmith@jonesday.com>

Cc: Langston, Lee F. (TAX) <Lee.F.Langston@usdoj.gov>; Magnani, Christopher (TAX) <Christopher.Magnani@usdoj.gov>

Subject: U.S. v. Brockman 4:21cr009 GCH

**** External mail ****

Good morning counsel

Can we schedule a phone conference this week to discuss logistics of our experts' interview and examination of Mr. Brockman.

May I propose this Wednesday Feb 24, 2021 at 2:00 pm EST? If date and time does not work with your schedules can you propose an alternative.

Thank you

Corey J. Smith
Senior Litigation Counsel
Tax Division
(202) 514-5230

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.